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No. 01-1289

In the
Supreme Court of the United States

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,
PETITIONER,

v.

INEZ PREECE CAMPBELL AND MATTHEW C. BARNECK, SPECIAL ADMINISTRATOR AND PERSONAL REPRESENTATIVE OF THE ESTATE OF CURTIS B. CAMPBELL,
RESPONDENTS.

On Writ Of Certiorari To
The Utah Supreme Court

RESPONDENTS' MOTION FOR LEAVE TO FILE AND BRIEF IN RESPONSE TO SUPPLEMENTAL BRIEF OF PETITIONER

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MOTION FOR LEAVE TO FILE BRIEF IN RESPONSE TO PETITIONER'S SUPPLEMENTAL BRIEF

On December 9, petitioner State Farm filed a supplemental brief in this case. Pursuant to Rules 21 and 25.5, respondents respectfully seek leave of Court to respond to the issues raised by State Farm.

Respectfully submitted.

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RESPONDENTS' BRIEF IN RESPONSE TO PETITIONER'S SUPPLEMENTAL BRIEF

State Farm's supplemental brief cites *White v. Ford Motor Co.*, No. 99-15185, 2002 WL 31687641 (9th Cir. Dec. 3, 2002), as support for its arguments. But the Ninth Circuit reaffirmed the basic proposition that "[e]xtraterritorial conduct is admissible for its bearing on degree of reprehensibility." Slip op. 38. Further, in *White* the defendant preserved its objections to extraterritoriality at trial and requested a jury instruction on the issue, which was refused. Here, by contrast, the trial court held that State Farm waived its extraterritoriality objections to testimony and arguments of counsel. Pet. App. 104a.[1] State Farm did not propose an extraterritoriality instruction or object to the jury instructions on that basis. In fact, its own proposed instruction No. 40 told the jury that it could consider the effect of State Farm's behavior "on the lives of plaintiffs and lives of other policy holders."

In *White*, the jury awarded damages on the basis of Ford's nationwide sales of pick-up trucks. In this case, evidence of out-of-state acts was admitted as impeachment and rebuttal evidence as a direct result of State Farm's trial strategy. Pet. App. 158a-60a, JA 3330a-37a. The Utah Supreme Court, on de novo review, found that State Farm's "policies have affected vast numbers of other Utah customers." Pet. App. 30a; JA 1344a ("for every one that will take on a company the size and with the resources of State Farm, there are hundreds, if not thousands, that simply go away") (Fye testimony). Between 1980 and 1994,

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[1] State Farm's suggestion that the trial court rubber-stamped plaintiffs' proposed findings is incorrect. The court issued a 12-page oral opinion from the bench on Dec. 19, 1997 containing detailed findings. 12/19/97 Tr. 277-89. The court asked plaintiffs to memorialize that ruling in a draft order and opinion, *id.* at 290-96, allowed State Farm to file objections, and heard argument over four days (4/28/98, 7/23/98, 7/31/98, 8/3/98) during which the court went over the order paragraph-by-paragraph and made numerous changes. State Farm told the trial judge that it did not "question that general practice" and "you did give quite a detailed explanation of your thinking" in the bench opinion. 4/28/98 Tr. 5-6.

there were approximately 29,500 third-party bodily injury claims (not including first-party claims) made in Utah, JA 3005a, and assigned by State Farm to claims adjusters operating under instructions – undeniably kept secret from the insured and never defended in this litigation – to subject all claims payments to the same overriding annual quotas that governed the handling of first-party claims, all without regard to the merits of each claim. The Utah evidence introduced by the Campbells was by no means limited to the facts of their case but extended to State Farm's similarly fraudulent handling of countless other Utah claims. JA 435a-36a, 439a, 441a, 457a (former State Farm Utah employee Samantha Bird); 2908a, 2913a-48a, 2984a-97a (former State Farm Utah employee Ray Summers); 1215a-16a, 1241a, (Gary Fye); 2151a (Steven Prater). The trial court found that the PP&R policy was "inherently fraudulent . . . given that, if consumers were informed in advance of the incentive system no one would buy State Farm's policies," Pet. App. 118a; *see also* JA 1356a (testimony), and targeted vulnerable insureds like the Campbells. Pet. App. 122a, JA 3360a-66a. Even State Farm recognized at trial that plaintiffs' theory in this very case was "fraud in the inducement," JA 112a, 5/21/96 Tr. 176, *not* simply unreasonable failure to settle. In its special verdicts, the jury found for both Mr. and Mrs. Campbell on their fraud claim, and the state supreme court held that the fraud claim provided "an independent basis" for the verdict. Pet. App. 64a.[2]

Respectfully submitted.

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[2] State Farm's claim that there were only seven excess verdict cases in Utah between 1978 and 1995, JA 288a-89a, was little more than a guesstimate. State Farm deliberately stopped tracking verdicts against it in the mid-1970s as a defensive measure. Pet. App. 17a, 19a, 112a, 126a; JA 1346a-50a, 1412a-18a. To derive the figure of seven excess verdicts, a State Farm official made phone calls to various company employees and defense counsel in Utah. JA 287a-89a. State Farm's own statistical expert said, "I would have a tendency to be afraid of that data." JA 3048a.

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